

SUBCHAPTER G—FINANCIAL ACTIVITIES

PART 101—LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

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§ 101.1 Definitions.

As used in this part 101:

Applicant means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

Commissioner means the Commissioner of Indian Affairs or an authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with

profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Indian means a person who is a member of an Indian tribe as defined in this part.

Organization means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Other organization means any non-Indian individual, firm, corporation, partnership, or association.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

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Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Revolving loan fund means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 14, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

Secretary means the Secretary of the Interior.

Tribes means any Indian tribe, bank, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[57 FR 46471, Oct. 8, 1992]

§ 101.2 Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon. Loans made by tribes or relending organizations may be for the following purposes:

(1) To individual Indians or Natives, cooperative associations, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians or Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grant or scholarship sources, or federal or state training programs.

Loans may also be made by the United States to tribes for loaning to or investing in other organizations subject to the provisions in paragraph (d) of this section.

(b) Direct loans may be made by the United States to eligible tribes, tribal organizations or corporations and tribal cooperative associations without fund restrictions. Direct loans to individual Indians, partnerships, and other non-tribal organizations shall not exceed \$350,000. Direct loans from the United States shall be made for the following purposes:

(1) To eligible tribes, individual Indians, Natives, or associations thereof, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or

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graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grants or scholarship sources or federal or state training programs.

(c) Before a United States direct loan is approved, the Commissioner may require the applicants to prepare a market and capacity report on existing or proposed economic enterprises for which financing is requested if the operation involves manufacturing, selling or providing services.

(d) Loans may be made to eligible tribes and Indian organizations for use in attracting industries and economic enterprises, the operation of which will contribute to the economy of a reservation. Tribes and Indian organizations may receive loans from the revolving loan fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation will be accompanied by:

(1) Audited balance sheets and operating statements of the other organization for the immediate three preceding years;

(2) Pro forma operating statement and balance sheets for the succeeding three years reflecting the results of operations after injection of the additional funds;

(3) Names of owners or if a corporation and stock has been issued, names of major stockholders and shares of stock owned by each;

(4) A copy of the articles of incorporation and bylaws, if incorporated, or other organization papers if not incorporated;

(5) Names of members of the board of directors and officers with a resume of education and experience, and the number of shares of stock owned by each in the corporation;

(6) Purposes for which loan or investment will be used; and

(7) If for manufacturing, selling or providing services, a market and capacity report will be prepared. If a proposed operation is to be established, the information in paragraphs (d)(2) through (7) of this section will be furnished. The Commissioner may require additional information on the other organization, if needed, to adequately evaluate the benefits which the Indian organization will receive and the economic benefits which will accrue to a reservation. If the loan is for relending to another organization, the application must show what security is being offered. If the loan is for investment in another organization, the equity to be obtained must be shown. Copies of all agreements, contracts or other documents to be executed by the Indian organization and the other organization in connection with a loan or investment shall be submitted with the application for a loan and will require Commissioner approval prior to disbursement of loan funds to the Indian organization.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989]

§ 101.3 Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as tribal relending programs, banks, Farmers Home Administration, Small Business Administration, Production Credit Associations,

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or Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to title II of the Indian Financing Act of 1974 (88 Stat. 77). In addition, the applicant will be required to have equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise.

(b) The establishment of a United States direct revolving loan program on a reservation(s) for making direct loans will require the approval of the Commissioner. All requests for establishing a United States direct revolving loan program on a reservation will be accompanied by reasons for need, estimate of financing needs, and other sources of financing available to meet the needs. The Commissioner, in approving a United States direct loan program, may require the preparation and approval of a plan of operation for conducting the program.

(c) If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant may be able to obtain the loan from other sources, the Commissioner, before approving a United States direct loan, will require the applicant to furnish letters from two customary lenders in the area who are making loans for similar purposes, stating whether or not they are willing to make a loan to the applicant for the same purposes and amount. If a customary lender will make the loan on reasonable terms and conditions, the Commissioner will not approve a United States direct loan.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989; 57 FR 46471, Oct. 8, 1992]

§ 101.4 Applications.

An applicant for a United States direct loan or a loan from a relending organization conducting a relending program under this part will submit an application on a form approved by the Commissioner. Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan

requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. In addition, applications for loans to finance economic enterprises already in operation will be accompanied by:

(a) A copy of operating statements, balance sheets and budgets for the prior two operating years or applicable period thereof preceding submittal of the application;

(b) Current budget, balance sheet and operating statements; and

(c) Pro forma budgets operating statements and balance sheets showing the estimated results for operating the enterprise for two years after injection of the loan funds into the operation.

A resume of the applicant's management experience will be submitted with the application. Applications for loans and requests for advance of tribal trust funds for relending under the provisions of this part shall be accompanied by a declaration of policy and plan of operation or other acceptable plan for conducting the program. Applications for loans or modifications thereof, to establish, acquire, operate, or expand an economic enterprise shall be accompanied by a plan of operation. Declarations of policy or other plans for conducting a relending program and plans of operation for economic enterprises require the approval of the Commissioner before becoming effective. An application from a corporation, partnership or cooperative association, for a United States direct loan or a loan under a relending program for financing an economic enterprise must, in addition to financial statements and budgets, include a copy of documents establishing the entity, or the proposed

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documents to be used in establishing it.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46471, Oct. 8, 1992]

§ 101.5 Approval of loans.

(a) Loan agreements, including those used by relending organizations in operating a relending program, must be executed on a form approved by the Commissioner. On direct United States loans, the Commissioner will approve the loan by issuing a commitment order covering the terms and conditions for making the loan.

(b) Applications for loans from relending organizations must be approved, if a tribe, by the governing body or designated committee, or other approving committee or body authorized to act on credit matters for a relending organization, before the Commissioner takes action on the application. This designated governing body of the tribe or committee must be authorized to act on behalf of the relending organization as evidenced in the organization's declaration of policy and plan of operation.

(c) Corporations, partnerships and cooperative associations organized for the purpose of establishing, acquiring, expanding, and operating an economic enterprise shall be organized pursuant to federal, state or tribal law. The form of organization shall be acceptable to the Commissioner. Economic enterprises which are or will be operated on a reservation(s) must comply with the requirements of applicable rules, resolutions and ordinances enacted by the governing body of the tribe.

§ 101.6 Modification of loans.

(a) *United States direct loans.* Any modification of the terms and provisions of a United States direct loan agreement must be requested in writing by the borrower and approved by the Commissioner. The borrower will submit the request for modification and will indicate the section(s) of the loan agreement to be modified together with a justification for the modification. Requests for modifications of loan agreements will include an agreement to abide by the provisions of the regulations in this part and future amend-

ments and modifications thereof. In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

(b) *Relending program.* Any modification of the terms and provisions of a loan agreement of a borrower from an organization conducting a relending program must be in writing, agreed to by the borrower, and must be approved by the body authorized to act on loans and modifications thereof as provided in an approved declaration of policy and plan of operation or other plan. If a request for modification of a loan has been disapproved by the body authorized to act on the request, the rejected borrower may request the Commissioner to make a direct loan from the revolving loan fund if the Commissioner determines that the rejection is unwarranted.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.7 Management and technical assistance.

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. Assistance may be provided by available Bureau of Indian Affairs staff, the tribe or other sources which the Commissioner considers competent to provide needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter 153 (35 Stat. 71), as

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amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

§ 101.8 Environmental and Flood Disaster Acts.

Loans will not be approved until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), the National Environmental Policy Act of 1969 (Pub. L. 91-190), (42 U.S.C. 4321) and Executive Order 11514.

§ 101.9 Preservation of historical and archeological data.

(a) On United States direct loans from the revolving loan fund and modifications thereof to provide additional loan funds which will involve excavations, road or street construction, land development or disturbance of land on known or reported historical or archeological sites, the Commissioner will take or require appropriate action to assure compliance with the applicable provisions of the Act of June 27, 1960 (74 Stat. 220; (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174).

(b) On loans made by relending organizations conducting a relending program using revolving loan funds, the body authorized to act on loan applications and modifications thereof will, at the time of taking action on a loan or request for modification, inform the applicant of the applicability of this Act to the loan and advise the Commissioner of compliance or the need to obtain compliance.

§ 101.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.

(a) United States direct loans and loans made by a relending organization are subject to the provisions of Federal Reserve Regulation Z (Truth In Lending, 12 CFR part 226; Pub. L. 91-508, 84 Stat. 1127). Economic enterprises which extend credit and require payment of finance charges on unpaid balances will determine the applicability of Regulation Z and comply with the requirements thereof. The Commissioner will issue any necessary instructions to as-

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sure compliance with Regulation Z on United States direct loans.

(b) Relending organizations, through their committee or other body authorized to act on loan matters on its behalf, will assure compliance with the applicable provisions of this Act.

(c) The Commissioner will require adherence to the provisions and requirements of title VI of the Fair Credit Reporting Act in making United States direct loans. Relending organizations, through the body authorized to act on credit matters, will require compliance with the requirements of the Fair Credit Reporting Act.

§ 101.11 Interest.

(a) The interest to be charged on loans by the United States shall be at a rate determined by the Secretary of the Treasury in accordance with section 104, title I, of the Indian Financing Act of 1974 (Pub. L. 93-262, 88 Stat. 77). The interest rate shall be determined monthly and shall be effective on advances made on loans during the current calendar month. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s).

(b) Additional charges to cover loan administration costs, including credit reports, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

(d) The interest rate on loans made by relending organizations which are conducting relending programs shall not be less than the rate the organization pays on its loan(s) from the United States. Relending organizations which adopt and follow the same procedure in calculating interest on educational loans as is followed on educational loans made by the United States, will not be charged interest on loans from the United States on the amount outstanding on educational loans during the period the organization is not charging its borrowers interest.

(e) Interest rates on loan advances made by the United States as shown on promissory notes dated before April 12, 1974, will remain in effect until the loan is paid in full, refinanced, or modified to extend the repayment

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terms. Unless otherwise specifically provided in a loan contract, the interest rate on advances made after April 12, 1974, will be at a rate determined pursuant to section 104 of title I of the Indian Financing Act of 1974. The interest rate on loans for expert assistance will be at a rate established in § 101.25 herein.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.12 Records and reports.

Loan agreements between the United States and tribes, corporations, partnerships, cooperative associations and individual Indians for financing economic enterprises, and to relending organizations, will require that borrowers establish and maintain accounting and operating records that are satisfactory to the Commissioner and submit written reports as required by the Commissioner. The records, accounts, and loan files shall be available for examination and audit by the Commissioner at any reasonable time. Unless an exception is approved by the Commissioner, borrowers will be required to have an annual audit made of the records of relending programs and economic enterprises financed with revolving loan funds, by a certified public accountant or a firm of certified public accountants satisfactory to the Commissioner.

§ 101.13 Security.

(a) United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is

sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(b) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 152.34 and the Act of March 29, 1956 (70 Stat. 62; (25 U.S.C. 483a)). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the loan in case of default. On proposed foreclosures which involve the sale of individually held trust or restricted land given as security for a loan, the tribe of the reservation on which the land is located will be notified in writing at least thirty calendar days in advance of the anticipated date of sale. Land purchased by a tribe with the proceeds of a loan from the revolving loan fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe may not be mortgaged as security for a loan.

(1) Title to any land purchased by a tribe or by an individual Indian with revolving loan funds may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control, or use.

(c) Mortgages of leasehold interests in land held in trust or restricted status by an individual Indian, may be

taken for the purpose of borrowing capital for the development and improvement of the leased premises when permitted in the lease or lease modification agreement. Such mortgages must be approved by the lessor and Commissioner. (70 Stat. 62, (25 U.S.C. 483a)).

(d) Individuals may give assignments of income from trust property as security for loans. Tribes may give assignments of trust income as security for loans provided that the assignment shall be specific as to the source(s) of income being assigned. All assignments of trust income require approval by the Commissioner before becoming effective.

(e) Chattels may be given as security for a loan. A mortgage on chattels, the title to which is known to be in trust, requires Commissioner approval. Non-trust chattels may be mortgaged without approval of any federal official.

(f) Crops grown on lands held in trust or restricted status for the benefit of an individual Indian may be given as security for a loan when approved by the Commissioner. Crops grown on leased, trust or restricted land may be given as security for a loan when permitted by the provisions of a lease or when the owner gives written consent. Approval of the lien document by the Commissioner is required. Crops grown on trust or restricted land held by a tribe which has been assigned to an individual for use may be given as security for a loan, provided the terms of the assignment permit the assignee to give the crops as security for a loan or the tribe's governing body specifically gives consent. The lien document requires Commissioner approval. Crops grown on non-trust or non-restricted land may be mortgaged without the approval of any federal official.

(g) Title to any personal property purchased with a loan shall be taken in the name of the purchaser and mortgaged to secure the loan unless the loan is otherwise adequately secured. Tribes must adhere to the provisions of their constitutions and bylaws, corporate charters, or other organizational documents when mortgaging tribal property and assigning trust income as security for loans.

(h) Relending organizations receiving a loan from the United States for re-

lending shall be required to assign to the United States as security for the loan all securities acquired in connection with loans made to its members, sub-organizations, or associations from such funds, unless the Commissioner determines that repayment of the loan to the United States is otherwise reasonably assured. Funds advanced to finance a tribal economic enterprise shall be secured by an assignment of net income and net assets of the economic enterprise, unless the Commissioner determines that it is not feasible to require an assignment or that repayment of the loan to the United States is otherwise reasonably assured.

(i) Securing documents or financing statements shall be filed or recorded in accordance with applicable state or federal laws except for those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the customs house designated as the home port of the vessel as shown on the marine document.

§ 101.14 Maturity.

The maturity of any United States direct loan shall not exceed thirty years. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose of the loan and the repayment capacity of the borrower.

§ 101.15 Penalties on default.

Unless otherwise provided in the loan agreement between the United States and a borrower, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for the taking of any one or all of the following steps by the Commissioner:

(a) Discontinue any further advance of funds contemplated by the loan agreement.

(b) Take possession of any or all collateral given as security and in the case of individuals, corporation, partnerships or cooperative associations, the property purchased with the borrowed funds.

(c) Prosecute legal action against the borrower or against officers of corporations, tribes, bands, credit associations, cooperative associations, and other organizations.

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(d) Declare the entire amount advanced immediately due and payable.

(e) Prevent further disbursement of credit funds under the control of the borrower.

(f) Withdraw any unobligated funds from the borrower.

(g) Require relending organizations conducting a relending program to apply all collections on loans to liquidate the debt to the United States.

(h) Take possession of the assets of a relending organization conducting a relending program and exercise or arrange to exercise its powers until the Commissioner has received acceptable assurance of its repayment of the revolving loan and compliance with the provisions of the terms of the loan agreement.

(i) Liquidate, operate or arrange for the operation of economic enterprises financed with revolving loans made to individuals, tribes, corporations, partnerships and cooperative associations until the indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and compliance with the terms of the loan agreement.

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.16 Default on loans made by relending organizations.

Relending organizations conducting relending programs using revolving loan funds will follow prudent lending practices in making and servicing loans and take appropriate actions to protect their interests in the security given to secure repayment of loans. Declarations of policy and plans of operation shall include procedures which will be followed in acting to correct a default, such as modification of loan agreement or foreclosure and liquidation of security. Relending organizations employing a general counsel will refer legal questions on foreclosure procedures and sale of security to their counsel.

§ 101.17 Uncollectable loans made by the United States.

If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken as security for loans. The cancellation of all or part of a loan shall become effective when signed by the Secretary.

[54 FR 34975, Aug. 23, 1989]

§ 101.18 Uncollectible loans made by relending organizations.

(a) Relending organizations conducting relending programs using revolving loan funds may, when approved by the Commissioner, chargeoff as uncollectible all or part of the balance of principal and interest owing on

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loans which are considered to be uncollectible. Usually a chargeoff includes both principal and interest and provides for cessation of interest accruals on the principal balance owing as of the date of the chargeoff.

(b) Action to chargeoff a loan will be in the form of a resolution enacted by the committee or body authorized and responsible for actions on loan matters for the relending organization. Before action is taken to chargeoff a loan as uncollectible, the lender will make an effort, to the extent feasible, to liquidate the security given for a loan and apply the net proceeds as a repayment on the balance of principal and interest owed. The chargeoff of a loan by a relending organization as uncollectible will not reduce the principal balance owed to the United States. A chargeoff will not release the borrower of the obligation or the responsibility to make payments when his or her financial situation will permit. Chargeoff action will not release the lender of responsibility to continue its efforts to collect the loan.

§ 101.19 Assignment of loans.

A borrower of a direct loan from the United States may not assign the loan agreement or any interest in it to a third party without the consent of the Commissioner. Relending organizations which are conducting relending programs may not assign the loan agreements of borrowers, or any interest therein, to third parties without the approval of the Commissioner and the borrower.

§ 101.20 Relending by borrower.

(a) A relending organization may reloan funds loaned to it by the United States with the approval of the Commissioner. The Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Loans shall be secured by such securities as the lender and the Commissioner may require. With the Commissioner's approval, mortgages of individually held trust or restricted land, leasehold interests, chattels, crops grown on trust or restricted land, and assignments of trust income may all be taken as security for loans.

(c) Title to personal property purchased with loans received from relending organizations using revolving loan funds in its relending program shall be taken in the name of the borrower.

(d) The term of a loan made by a relending organization conducting a relending program shall not extend beyond the maturity date of its loan from the United States, unless an exception is approved by the Commissioner and the organization has funds available from which to make scheduled repayment on its loan from the United States. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose for which a loan is made and the indicated repayment capacity of the borrower.

(e) Securing documents or financing statements shall be filed or recorded in accordance with federal or state law except those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the custom house designated as the home port of the vessel as shown on the marine document.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated and amended at 57 FR 46472, Oct. 8, 1992]

§ 101.21 Repayments on United States direct loans.

Repayments on United States direct loans shall be made to the authorized collection officer of the Bureau of Indian Affairs who shall issue an official receipt for the repayment and deposit the collection into the revolving loan fund. Collections will first be applied to pay interest to date of payment and the balance applied on the principal installment due. Collections on loans made by relending organizations which have been declared in default in which the Commissioner has taken control of the assets of the program (including loans made with balances owing) will be made to an authorized collection officer of the Bureau of Indian Affairs who shall issue a receipt to the payor and deposit the collection in the United States revolving loan fund. The relending organization's loan from the United States will be credited with the amounts collected from its borrowers,

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with the collections applied first on interest accrued and the balance applied to the principal. Payments on United States direct loans may be made in advance of due dates without penalty.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.22 Repayments on loans made by relending organizations.

Repayments on loans made by a relending organization conducting a relending program will be made to the officers of the lending organization or individuals designated and authorized in a declaration of policy and plan of operation. Collections on loans and other income to a relending program will be deposited in the lender's revolving loan account as designated in a declaration of policy and plan of operation. Collections on loans will be first applied to pay interest to date of payment with the balance applied to the principal.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.23 Approval of articles of association and bylaws.

Articles of association and bylaws of relending organizations and cooperative associations require approval of the Commissioner if they make application for a revolving credit loan.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.24 Loans for expert assistance for preparation and trial of Indian claims.

(a) Loans may be made to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of section 1 of the Act of November 4, 1963 (Pub. L. 88-168, 77 Stat. 301; 25 U.S.C. 70n-1), as amended by the Act of September 19, 1966 (Pub. L. 89-592, 80 Stat. 814) and section 2 of the Act of May 24, 1973 (Pub. L. 93-37, 87 Stat. 73). Loan proceeds may only be used for the employment of expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission. Applications for loans will be sub-

mitted on forms approved by the Commissioner and shall include a justification of the need for a loan. The justification shall include a statement from the applicant's claims attorney regarding the need for a loan. The application will be accompanied by a statement signed by an authorized officer of the applicant certifying that the applicant does not have adequate funds available to obtain and pay for the expert assistance needed. The Superintendent and the Area Director will attest to the accuracy of the statement or point out any inaccuracies. Loans will be approved by issuance of a commitment order by the Commissioner.

(b) No loan shall be approved if the applicant has funds available on deposit in the United States Treasury or elsewhere in an amount adequate to obtain the expert assistance needed or if, in the opinion of the Commissioner, the fees to be paid the experts are unreasonable on the basis of the services to be performed by them.

(c) Contracts for the employment of experts are subject to the provisions of 25 U.S.C. 81 and require approval by the Commissioner.

(d) Vouchers or claims submitted by experts for payment for services rendered and reimbursement for expenses will be in accordance with the provisions of the expert assistance contract and shall be sufficiently detailed and itemized to permit an audit to determine that the amounts are in accordance with the contract. Vouchers or claims shall be reviewed by the borrower's claims attorney who will certify on the last page of the voucher or by attachment thereto, that the services have been rendered and payment is due the expert and that expenses and charges for work performed are in accordance with the provisions of the contract.

(e) Requests for advances under the loan agreement shall be accompanied by a certificate signed by an authorized officer of the borrower certifying that the borrower does not have adequate funds available from its own financial resources with which to pay the expert. The Superintendent and Area Director will attest to the accuracy of the statement or point out inaccuracies. A copy of the voucher or claim from the expert

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will accompany the request for advance.

(f) Loan funds will be advanced only as needed to pay obligations incurred under approved contracts for expert assistance. The funds will be deposited in a separate account, shall not be commingled with other funds of the borrower, and shall not be disbursed for any other purpose.

(g) Loans shall bear interest at the rate of 5½ percent per annum from the date funds are advanced until the loan is repaid.

(h) The principal amount of the loan advanced plus interest shall be repayable from the proceeds of any judgment received by the borrower at the time funds from the award become available to make the payment.

(77 Stat. 301 (25 U.S.C. 70n-1 to 70n-7))

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.25 Information collection.

(a) The collections of information contained in §§101.3, 101.4, 101.12, and 101.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0020. The information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project

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(1076-0020), Office of Management and Budget, Washington, DC 20503.

[54 FR 34975, Aug. 23, 1989. Redesignated at 57 FR 46472, Oct. 8, 1992]

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